

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SEARS HOLDINGS CORPORATION,  
*et al.*,  
Debtors.

Case No.: 18-23538 (RDD)  
Jointly-Administered

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**OBJECTION OF AMAZON WEB SERVICES, INC. TO THE DEBTORS' NOTICE OF  
CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH  
GLOBAL SALE TRANSACTION**

Amazon Web Services, Inc. ("AWS") by and through undersigned counsel, hereby submits this timely Objection (this "Objection")<sup>1</sup> to the Debtors' Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Dkt. No. 1731] (the "Cure Notice"), respectfully showing the Court as follows:

1. On October 15, 2018 (the "Petition Date"), Sears Holdings Corporation and related companies (collectively, the "Debtors") filed voluntary petitions for relief with this Court under Chapter 11 of the Title 11 of the United States Code (the "Bankruptcy Code").

2. Prior to the Petition Date, AWS and Sears Holdings Management Corporation, one the Debtors in this proceeding (the "Subject Debtor") entered into an AWS Enterprise Agreement and an AWS Implementation Services Addendum (together with any and all amendments thereto, the "Agreement").

3. Pursuant to the Agreement, AWS agreed to provide certain services, including, web hosting, on the terms and conditions outlined therein.

4. On or about January 18, 2019, the Debtors filed their Cure Notice, pursuant to which they, *inter alia*, asserted that they may seek to assume and assign the Agreement to the Successful Bidder (as defined in the Cure Notice) and designated a proposed cure amount of zero

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<sup>1</sup> The Debtor consented to an extension until Monday, January 28, 2019 at 4:00 p.m. to file this Objection.

(\$0.00) (the “Proposed Cure Amount”) to be paid in connection with any assumption and assignment of the Agreement.

5. AWS disagrees with the Proposed Cure Amount and instead asserts that the cure amount that must be paid in connection with any potential assumption and assignment of the Agreement equals \$1,075,159.43, as of January 28, 2019, the date of filing of this Objection (together with all other amounts that accrue and are unpaid under the Agreement as of the effective date of any assumption of the Agreement, the “Actual Cure Amount”)<sup>2</sup>.

6. AWS provided the Debtors with all invoices necessary to substantiate the Actual Cure Amount owing as of January 28, 2019 prior to the original objection deadline to the Cure Notice.

7. To the extent the Subject Debtor seeks to assume the Agreement pursuant to Section 365 of the Bankruptcy Code, the Subject Debtor must first cure all defaults under the Agreement at the time of assumption. 11 U.S.C. § 365(b)(1)(A).

8. Consequently, the Subject Debtor may not assume the Agreement unless it pays AWS the Actual Cure Amount and AWS objects to any assumption of the Agreement unless the Subject Debtor expressly agrees to pay AWS the Actual Cure Amount in connection with any assumption of the Agreement.

9. AWS reserves the right to contest the assumption, assignment or rejection of the Agreement on any basis other than the Proposed Cure Amount. Additionally, AWS expressly reserves the right to amend, supplement, or modify this Objection and to file in the future additional appropriate pleadings.

WHEREFORE, AWS respectfully requests this Court enter an Order:

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<sup>2</sup> AWS continues to provide services to the Subject Debtor and to send the Subject Debtor post-petition invoices on account of these services on a monthly basis. If the Subject Debtor would like to assume the Agreement, then it must pay all additional amounts coming due under the Agreement prior to the date on which the Agreement is assumed.

A. Conditioning the assumption of the Agreement on the Subject Debtor expressly agreeing to pay the Actual Cure Amount, constituting all amounts due and owing under the Agreement as of the assumption of the Agreement; and

B. Granting AWS such other and further relief as this Court may deem just and proper.

Dated: January 28, 2019  
Wantagh, New York

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Dated: January 28, 2019  
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